

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-2218

JAMES G. GILLES, Brother,

Plaintiff - Appellant,

versus

ROLAND M. WHEELER, Director of University Services, Virginia Polytechnic Institute and State University; ANN SPENCER, Associate Vice-President for Personnel and Administrative Services, Virginia Polytechnic Institute and State University; CLARRESSA M. MORTON, Assistant Director for Event Planning, Virginia Polytechnic Institute and State University; BOARD OF VISITORS, VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY; RICHARD M. BAGLEY, Honorable; JOSEPH H. BARLOW; WILLIAM C. BROADDUS, Esquire; HENRY J. DEKKER; BUFORD L. DRISKILL, JR.; HORACE G. FRALIN; CLIFTON C. GARVIN, JR.; ROBERT J. GREY, JR.; MICHAEL M. HAWES, Vice-President for Finance and Administration Olver, Incorporated; W. PAT JENNINGS, SR., The Honorable; CECIL R. MAXSON, JR., Facilities Executive Officer Corporate Facilities Manager NationsBank Service Corporation; RHEA F. MOORE, JR.; ROSE MILES ROBINSON; SUE ELLEN ROCOVICH, Dr.; ROBERT MORGAN, Student Member; PAUL E. TORGERSEN, President, Virginia Polytechnic Institute and State University; TOM GOODALE, Dr., Vice-President for Student Affairs, Virginia Polytechnic Institute and State University,

Defendants - Appellees,

and

BEVERLY H. SGRO, Dean of Students, Virginia Polytechnic Institute and State University; JERRY D. CAIN, General Counsel & Special Assistant Attorney General, Virginia Polytechnic Institute and State University,

Defendants.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Jackson L. Kiser, Senior District Judge. (CA-92-933-R)

Submitted: November 28, 1997 Decided: December 11, 1997

Before WILKINSON, Chief Judge, and WIDENER and ERVIN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

J. Patrick Wiseman, WISEMAN, DURST, TUDDENHAM & OWEN, Austin, Texas, for Appellant. James S. Gilmore, III, Attorney General of Virginia, William H. Hurd, Deputy Attorney General, OFFICE OF THE ATTORNEY GENERAL, Richmond, Virginia; Jerry D. Cain, General Counsel/Special Assistant Attorney General, Kay Heidbreder, Associate General Counsel/Special Assistant Attorney General, VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY, Blacksburg, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Appellant James G. Gilles originally filed suit against Virginia Polytechnic Institute and State University ("Virginia Tech") challenging the constitutionality of regulations under which the university prohibited him from preaching at its drill field. By an Agreed Order, the parties submitted to the district court only the question of the constitutionality of Virginia Tech's sponsorship regulation, which the court upheld against Appellant's First Amendment challenge. On appeal, we vacated the district court's order and remanded with directions to dismiss for lack of standing as there was no justiciable issue. See Gilles v. Torgersen, 71 F.3d 497 (4th Cir. 1995).

While that appeal was pending, the district court granted Appellant's motion for attorneys' fees based upon the Agreed Order. When Defendants did not comply with the order, Appellant moved to enforce it under Fed. R. Civ. P. 70. Defendants, in turn, filed a motion to vacate the attorneys' fees order pursuant to Fed. R. Civ. P. 60(b)(5). The district court granted Defendants' motion to vacate and denied Appellant's motion. Finding no reversible error, we affirm the order based on the reasoning of the district court. See Gilles v. Torgersen, No. 92-0933-R (W.D. Va. Aug. 9, 1996)*

AFFIRMED

* We previously granted Appellant's unopposed motion to submit this appeal for decision on the briefs without oral argument.